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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,786	01/17/2001	Hirokazu Sakai	201989US3	4950

22850 7590 01/27/2003

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EXAMINER

DEMILLE, DANTON D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 01/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/760,786

Applicant(s)

SAKAI ET AL.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 4, 9
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. Claims 1, 2, 4-9, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aichinger (German 0096102) in view of Harris. Aichinger teaches the heart of applicant's invention. The only difference is the inclusion of an additional cover within the outer cover of the container. The outer cover of Aichinger detachably attaches to the upper portion of the body over said opening. There is no unobviousness to provide an additional cover over the container opening so that the contents doesn't spill when the outer cover is removed. Harris teaches just such a convention. Figure 3 shows a container with an outer cover detachably attached to the upper portion of the body without an inner over. Figure 2 teaches the provision of including an inner cover removably covering the container opening. It would have been obvious to one of ordinary skill in the art to modify Aichinger to include an inner cover over the container opening as taught by Harris to prevent the contents from spilling when the outer cover is removed. Regarding claims 5-7, 12-14, specific dimensions and compositions of the projections are well within the realm of the artisan of ordinary skill dependent on practical considerations of intended use. Conventional rubbers, densities or dimensions such as that claimed are obvious well known variables in the construction of the device.

2. Claim 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Richardson. Richardson teaches the convention of providing a cover over the massaging projection to protect them from damage or being soiled for example. It would have been obvious to one of ordinary skill in the art to

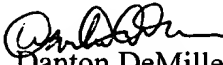
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further modify Aichinger to include a cover over the projections as taught by Richardson to cover the projections from damage or being soiled.

3. Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aichinger (German 0096102) in view of Harris and further in view of Homma et al. Using a conventional shampoo such as one that includes a cationic polymer, nonionic surface active agent, alcohol and water would have been an obvious provision in Aichinger or Harris. Homma teaches such a shampoo composition that includes 0.05 to 2.5 % cationic polymer (abstract), nonionic surface active agents (column 2, lines 4-5), alcohol (column 5, line 14) and the balance with water. It would have been obvious to one of ordinary skill in the art to modify shampoo container as set forth in claim 1 with the shampoo itself such as taught by Homma to complete the shampoo container.

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Art Unit 3764